IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1283 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BAI SAVITA JESHING BAVJI

Appearance:

1. Criminal Appeal No. 1283 of 1984

MR HH PATEL, ld. Addl.PUBLIC PROSECUTOR for appellant

NOTICE SERVED for Respondent

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 06/12/2001

ORAL JUDGEMENT

The State of Gujarat, the appellant, having been aggrieved by the judgment and order of acquittal passed by the learned Judicial Magistrate, First Class, at

Jhagadia, dated 16.7.1984, in Criminal Case No.302 of 1984 in favour of the respondent, has preferred this Appeal under Section 378 of the Code of Criminal Procedure, for challenging the aforesaid judgment and order of acquittal.

2. The case of the prosecution is that the raiding party of the Police, on receiving prior information, went to the Village Kharchi and after reaching there police obtained two panch witnesses from the same village. In accordance with the information, they saw present respondent and she was accosted on the way and upon carrying out the search, a plastic can containing four litres of illicit liquor was recovered from her. She was asked to produce any pass or permit for possessing the liquor, but she was unable to do so. The Police, therefore, collected 200 ml. of liquor from the can in a glass bottle and after complying with all the legal formalities, attached the illicit liquor under a panchnama. Since the respondent was, prima facie, found to be in possession of the liquor offences under Sections 66-B and 65-E of the Bombay Prohibition Act were registered against her. This happened on 4th September 1983. The Police, after completing the investigation, submitted the chargesheet in the Court of the learned Judicial Magistrate, First Class, at Jhagadia. The case against the respondent came to be numbered as Criminal Case No.302 of 1984.

At the trial, while recording the plea of the respondent, the gist of the accusation levelled against her by the prosecution was explained to her. The respondent pleaded not guilty and claimed to be tried.

3. Perusal of the Rojkam of this case shows that the plea of the respondent was recorded on 28th March 1984. On that day, since the respondent pleaded not guilty, the case was adjourned to 18th April 1984 with a view to enable the prosecution to keep its witnesses present for recording the evidence. On 18th April 1984, though the respondent was present, the witnesses were absent and hence another chance was given to the prosecution to keep its witnesses present by adjourning the case to 8th May 1984. On 8th May 1984, though the respondent was present, the witnesses were not present and hence one more chance was given to the prosecution for keeping the witnesses present. The case was thereafter adjourned to 30th May 1984. On that day, the respondent was present, but since the working hours of the Court were over, the case had to be adjourned to the next date, i.e. 27th June 1984. On 27th June 1984, the respondent remained

present, but the witnesses were absent. The learned Magistrate, therefore, adjourned the case to 2nd July 1984 to give one more chance to the prosecution to keep the witnesses present. On 2nd July 1984, a holiday was declared and, therefore, the hearing of the case could not take place and the matter stood adjourned to 16th July 1984. On 16th July 1984, the respondent was present, but the witnesses were not. On 16th July 1984, since the witnesses were not present, the learned Magistrate was constrained to observe that, despite sufficient opportunities having been given to the prosecution, it had failed to produce any evidence against the respondent and in light of that, on the same day, he passed an order acquitting the respondent of the offences with which she was charged. It is against this order that the present appeal is filed.

4. Mr.H.H.Patel, learned APP appearing for the State has submitted before me that the learned Magistrate, without giving proper opportunities to the prosecution, has passed the order of acquittal in favour of the respondent, which is not legal and proper. He has further submitted that while acquitting the respondent, the learned Magistrate has not assigned any reasons for doing so and according to him, this appeal deserves to be allowed.

5. The respondent, though served, has neither remained present in person nor through her Advocate.

6. I have carefully gone through the record of this case and in particular, the Rojkam in which the details of day-to-day proceedings have been stated. The record of this case shows that the criminal case against the respondent came to be filed in the Court of learned Magistrate on 8th February 1984 and the plea of the respondent was recorded on 28th March 1984. On 28th March 1984, the prosecution was instructed to keep its witnesses present on the next date of hearing, i.e. 18th April 1984. In between 28th March 1984 and 16th July 1984, the case was posted for hearing on six occasions and the Rojkam shows that, on four occasions out of six, the prosecution had not kept the witnesses present. The details of Rojkam of 30th May 1984 show that the respondent was present, but since the working time of the Court was over, the case was adjourned to the next date. The Rojkam of that day does not show whether the witnesses were present on that day or not. On 2nd July 1984, a holiday was declared and, therefore, the hearing could not take place. It, therefore, clearly appears that, barring these two days, though the prosecution was

given opportunities to keep the witnesses present, it has failed to do so. In the chargesheet submitted before the Court, the prosecution has cited the names of six persons as witnesses. It is clearly a matter of regret that despite several opportunities having been given to the prosecution, it had failed to keep even one person out of the six present on any of the aforesaid dates for examination. In light of this state of affairs, no fault can be found on the part of the learned Magistrate for having passed the order of acquittal in favour of the respondent. I, therefore, cannot accept the contention of Mr.Patel that the learned Magistrate had not given sufficient opportunity to the prosecution to enable it to examine its witnesses. Apart from this, a judicial notice can also be taken of the fact that the incident had taken place way back on 4th September 1983, the chargesheet against the respondent came to be submitted in the Court of learned Magistrate on 8th February 1984. Almost 18 years have passed since the date of incident and even if I am required to remand this matter for re-trial no useful purpose will be served as after a lapse of about 18 years, the witnesses would not be available for giving evidence before the Court or even if they are available they would not be in position to remember the details of the case.

7. In view of the aforesaid discussion, I see no merit in this appeal and the same deserves to be dismissed. The appeal is, therefore, ordered to be dismissed and the muddamal to be disposed of in accordance with the direction of the trial Court.

(Akshay H. Mehta, J.)

Sreeram.